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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,093	02/23/2004	Mordecai Dunst	1954-393	3524
6449 7590 09/17/2008 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER KASZTEJNA, MATTHEW JOHN				
ART UNIT 3739		PAPER NUMBER		
NOTIFICATION DATE 09/17/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

### Office Action Summary

**Application No.**

10/783,093

**Applicant(s)**

DUNST, MORDECAI

**Examiner**

MATTHEW J. KASZTJEJNA

**Art Unit**

3739

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 and 21-34 is/are pending in the application.
- 4a) Of the above claim(s) 35-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 21-34 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election of Species A in the reply filed on June 2, 2008 is acknowledged. Applicant states that the claims encompassing the elected species are 1-6 and 21-49. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The examiner disagrees that Species A encompassing claims 1-6 and 21-49. Species A is directed to claims 1-6 and 21-34 as being a blade assembly for a laryngoscope including a handle, a base and first and second guide tubes affixed to the blade. As stated in the previous office action, species A and B are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 6, 21-28, 30-34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,911,968 to Schueler et al.

**In regards to claims 1 and 27**, Schueler et al. disclose a blade assembly for a laryngoscope including a handle 1, the blade assembly comprising; base 2 for coupling

to the handle; an elongated blade 3 secured to the base, the elongated blade having a proximal end, a distal end, an upper surfaces and a lower surface, the lower surface of the elongated blade being secured to the base at the proximal end; a first guide tube 7 (or 48) affixed to the elongated blade and having a proximal end and a distal end; and a second guide tube 52 affixed to the elongated blade adjacent the first guide tube and having a proximal end and a distal end, the first and second guide tubes being constructed and arranged to direct tubes extended therethrough into the oral cavity of a patient (see Figs. 1-3).

**In regards to claims 2 and 28**, Schueler et al. discloses a blade assembly for a laryngoscope, wherein the first guide tube 7 is substantially straight along its entire length and the second guide tube is curved 52 (see Fig. 1).

**In regards to claim 4**, Schueler et al. discloses assembly for a laryngoscope, further comprising a light attached to the elongated blade (see Col. 2, Lines 40-65).

**In regards to claims 6 and 34**, Schueler et al. discloses a blade assembly for a laryngoscope, wherein the first and second guide tubes are oriented at different angles of attack 53, 50 with respect to the elongated blade so that when the elongated blade is placed atop the tongue of a patient to effect laryngeal suspension, the first end second guide tubes direct respective tubes extended therethrough into different regions of the patient's oral cavity (see Col. 4, Lines 21-35).

**In regards to claims 21 and 30**, Schueler et al. discloses a blade assembly for a laryngoscope, wherein the proximal end of the first guide tube and the proximal end of

the second guide tube are both positioned at the proximal end of the elongated blade (see Figs. 1-2).

**In regards to claims 22-24 and 31-32**, Schueler et al. discloses a blade assembly for a laryngoscope, wherein the distal end of the guide tube and the distal end of the second guide tube are positioned at about the midpoint of the elongated blade (See Fig. 1).

**In regards to claims 25-26 and 33**, Schueler et al. discloses a blade assembly for a laryngoscope, further comprising a first aspiration tube inserted into the first guide tube and a second aspiration tube inserted into the second guide tube (see Col. 4, Lines 21-35).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,911,968 to Schueler et al. in view of U.S. Patent No. 6,248,061 to Cook, Jr.

**In regards to claims 5 and 29**, Schueler et al. disclose a blade assembly for a laryngoscope including a handle 1, the blade assembly comprising; base for coupling to the handle; an elongated blade 3 secured to the base, the elongated blade having a proximal end, a distal end, an upper surfaces and a lower surface, the lower surface of

the elongated blade being secured to the base at the proximal end; a first guide tube 7 (or 48) affixed to the elongated blade and having a proximal end and a distal end; and a second guide tube 52 affixed to the elongated blade adjacent the first guide tube and having a proximal end and a distal end, the first and second guide tubes being constructed and arranged to direct tubes extended therethrough into the oral cavity of a patient (see Figs. 1-3) but is silent with respect to the elongated blade being curved. Cook, Jr. teach of an analogous laryngoscope blade 60 having a curved blade portion 62, a proximal end 66 and a distal end 64 and a base portion 74 to connect to a handle 26 (see Figure 6). Figures 6 and 7 show that the blade portion 62 has an upper surface and a lower surface and that the lower surface is secured to the base portion 74 at the proximal end 66. It would have been obvious to one skilled in the art at the time the invention was made to curve the elongate blade of Schueler et al. to aid in the placement of the laryngoscope within the airway of a patient as taught by Cook, Jr. and is well known in the art.

#### ***Allowable Subject Matter***

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed January 15, 2008 have been fully considered but they are not persuasive.

Applicant states that Schueler lacks a "base for coupling to the handle". Examiner disagrees. As broadly as claimed, upper end 2 is interpreted as a base and thus Schueler meets the limitations of the recited claims. As seen in Figures 1 and 3, upper end 2 is a base used for coupling the handle to the blade.

Applicant states that Schueler fails to disclose a blade. Examiner disagrees. Element 3, in the broadest interpretation of the claim, is a blade. Element 3 meets all the structural limitations of the claim in that it clearly has a proximal end, a distal end, an upper surface and a lower surface, the lower surface of the elongated blade being secured to the base at the proximal end. Thus the hollow tube is fully functional as a blade and Schueler meets the limitations of the claims.

Applicant states that Schueler and Cook fail to disclose a tongue deflector having a portion extending in a direction transverse to the upper surface of the blade. Examiner disagrees. As seen in Figs. 6-7, Cook clearly shows a tongue deflector 68 to which a fin 70 is attached (see Col. 5, Lines 1-10), arranged in an identical fashion to that of the instant invention. As broadly as claimed, the combination of Schueler and Cook meet the limitation of the recited claims.

Applicant states that Schueler and Cook fail to disclose an elongated blade wherein the curved portion of a guide tube follows the curve of the blade. Examiner disagrees. As clearly seen in Figure 7, Cook clearly shows a guide tube 81 which is curved and follows the curved surface of blade 62. Thus, Cook demonstrates that it was well known in the art to secure a guide tube to a laryngoscope blade in such a fashion so as the tube will follow the contour of the blade, whether the blade is curved

(as shown in Fig. 7) or straight (as shown in Figs. 8-9). As broadly as claimed, the combination of Schueler and Cook meet the limitation of the recited claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. KASZTEJNA whose telephone number is (571)272-6086. The examiner can normally be reached on Mon-Fri, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. K./  
Examiner, Art Unit 3739

/Linda C Dvorak/  
Supervisory Patent Examiner, Art  
Unit 3739

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